IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/03/2004

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THE HON'BLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.170 OF 1993

Paulraj .. Appellant

-Vs-

T.M.Mathalai Nadar Sons
through its Proprietor
T.M. Sadasiva Nadar
No.182, 183 Keezha Masi Street,
Madurai Nagar .. Respondent

This second appeal is preferred under Section 100 of CPC against the judgment and decree in AS No.62 of 1991 on the file of the learned 2 nd Additional Sub Judge, Madurai dated 24.7.1992 reversing the judgment and decree in OS No.652 of 1986 on the file of the learned Additional District Munsif, Madurai City dated 1.8.1990.

!For Appellant : Mr.P.Peppin Fernando

^For Respondent : No appearance

:JUDGMENT

This second appeal has been brought forth from the judgment of the learned Second Additional Subordinate Judge, Madurai made in AS No.62 of 1991, wherein the judgment of the trial court in a suit based on dealings was reversed insofar as the appellant/fourth respondent.

2. The plaintiff/respondent T.M.Mathalai Nadar Sons through its Proprietor has filed a suit for recovery of money against four defendants stating that the first defendant partnership firm and the defendants 2 to 4, who were partners, were liable to pay a sum of Rs.7282.20 with interest stating that the first defendant was the customer of the plaintiff, a licensed wholesale sugar and grocery dealer; that the first defendant was purchasing sugar and grocery from the plaintiff regularly in bulk quantity; that the transactions between the parties done in the usual course of business; that the first defendant was liable to pay from 1979 to 1.2.1983 a sum of Rs.7282.20; that the defendants 2 to 4, who were the partners, were also liable jointly and separately along with the first defendant firm; that despite repeated demands, the said amount was not paid, and hence, there arose

a necessity for filing the suit.
3. The defendants 1 to 3 remained exparte. The fourth defendant contested the suit stating that he ceased to be a partner of first defendant firm from 7.7.1982 under an agreement by settling his accounts; that the partnership was taken over by the defendants 2 and 3 with all the assets and liability and they were carrying on their business; that the plaintiff and the other customers were informed about the same and the fact was also known to the plaintiff; that the fourth defendant started new business, under the name and style of Gnana Jothi Stores, which is situated opposite to the first defendant's premises in 1982 itself; that the plaintiff and the fourth defendant had an independent business transaction from 7.9.1982 onwards for many years; that the defendants have also informed the plaintiff regarding the reconstitution of the first defendant firm; that the plaintiff, with the knowledge of the same, was supplying the same materials to the fourth defendant in his shop, and thus suppressing the said facts, the plaintiff has sought the relief against the fourth defendant also and that has got to be rejected.
4. The trial court framed necessary issues, tried the suit and dismissed the same as against the fourth defendant. Aggrieved, the plaintiff took it on appeal, wherein the judgment of the trial court was reversed and a decree was granted, which is being challenged by the fourth defendant in the suit.
5. At the time of admission, the following substantial questions of law were formulated by this Court for consideration:
1) Whether the lower appellate Court has not properly interpreted Ex.B-1 and considered the evidence of D.W.1 in holding that the appellant continuous to be a partner of Gnana Jothi Traders?
2) Whether the lower appellate Court has erred in making the appellant liable for the amount, because of the procedure contemplated under Section 32(2) of the Indian Partnership Act has not been followed?
3) Whether the appellant could be made liable when defendants 1 to 3 had been exonerated?
4) Whether the suit is barred by limitation?
6. This Court has heard the learned counsel for the appellant. Despite service, no representation for the respondent.
7. Admittedly, the plaintiff, who was a licensed wholesale Sugar and grocery dealer, is having his place of business at Madurai. He was supplying goods on loan basis to the first defendant firm, wherein the defendants 2 to 4 were partners. It is also not in controversy that the first defendant firm was liable to pay a sum of Rs.7282.20 in view of the said transaction between 1979 and 1.2.1983. The defendants 1 to 3 remained absent and they were set ex parte. The suit was contested only by the fourth defendant stating that he ceased to be a partner of the firm from 7.7.1982 and the said partnership firm was being run by defendants 2 and 3 and the defendants 2 and 3 have taken all the assets and liability and they were carrying on business. It is not disputed that the first defendant firm was being carried on by the defendants 2 and 3 even at the time of filing of the suit.
8. What was all contended by the fourth defendant appellant before the courts below and equally here also was that his retirement from the first defendant partnership firm on 7.7.1982 was very well informed to the plaintiff; that the plaintiff had got a thorough knowledge about the same;

that he continued to have dealings with the first defendant firm; that the fourth defendant started his new business under the name and style "Gnana Jothi Stores", which is situated opposite to the first defendant premises, to which the plaintiff was supplying the very same materials, and thus, the retirement of the fourth defendant and the reconstitution of the firm was very well within the knowledge of the plaintiff, and hence, the plaintiff had sufficient notice as to the retirement, and therefore, the plaintiff cannot plead that he had no knowledge of the said retirement.

9. It would be more advantageous to reproduce Section 32 of the Indian Partnership Act.

"Retirement of a partner: (1) A partner may retire

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partners all his intention to retire

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of a reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement. Provided that a retired partner is not liable to any third party who deals with firm without knowing that he was a partner.

(4) Notices under sub section (3) may be given by the retired partner or by any partner of the reconstituted firm."

From the very reading of the said section, it would be clear that the liability of the partner, who retires from the partnership firm, to any third party for the acts of the firm done before the retirement can be discharged, if there was any agreement made by the retiring partner with such third party and the partners of the reconstituted firm and this agreement can even be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement. True in the instant case, no evidence was available to show that any notice is given by the retiring partner or the partners of the reconstituted firm to the plaintiff. But, in order to prove that the fourth defendant has retired from the partnership firm on 7.7.1982, sufficient material was placed.

10. It is pertinent to point out that after the retirement from the first defendant firm, in which the fourth defendant was the partner, the fourth defendant has commenced his independent business under the name and style "Gnana Jothi Stores", which is situated just opposite to the first defendant firm. It is not in controversy that the plaintiff continued to supply the same materials both to the first defendant firm and also to the fourth defendant's shop. Under the stated circumstances, it is a case where it can be clearly stated that such an agreement could be well implied by a course of dealing between the plaintiff and the reconstituted firm after the plaintiff had knowledge of the retirement of the fourth defendant. It is a case where it can be well stated that the plaintiff had got a clear knowledge of the retirement of the fourth defendant from the first defendant firm. Under the stated circumstances, in the absence of the notice, the retired

partner, namely, the fourth defendant, cannot be made liable. Hence, the decree granted by the first appellate court against the fourth defendant has got to be set aside and in all other respects, the judgment of the first appellate court has got its force.

11. In the result, the judgment of the first appellate court is modified to the effect that the decree granted against the fourth defendant alone is set aside. In other respects, the judgment of the first appellate court is confirmed. This second appeal is allowed, leaving the parties to bear their costs.

Index : Yes
Internet : Yes

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To

1. The II Additional Sub Judge, Madurai
2. The Additional District Munsif, Madurai
3. The Record Keeper, VR Section,
High Court, Madras

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